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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,502	11/27/2001	Donald E. Mosing	FRK-086	1988

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THE MATTHEWS FIRM  
2000 BERING DRIVE  
SUITE 700  
HOUSTON, TX 77057

EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 04/09/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/027,502	<b>Applicant(s)</b> MOSING, DONALD E.	
	<b>Examiner</b> DANIEL P. STODOLA	<b>Art Unit</b> 3679	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 07 January 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679

Continuation of 10. Other (including any explanation in support of the above items): 37 CFR 41.33(d)(2) and MPEP 1206 make clear that "other evidence" filed after the date of filing of an appeal will not be admitted. Further, "exhibits" are clearly included as "other evidence". Appellant has included an exhibit of figures from one of the applied references that have been marked up in a particular manner by appellant. These marked-up figures constitute "other evidence" and must have been made of record before the filing of an appeal. Appellant has failed to state where in the record this "evidence" was previously submitted and entered by the examiner. If these marked-up figures were not previously submitted and entered into the record, then they cannot be admitted now as a part of the appeal brief.

37 CFR 41.37(c)(1)(ix) makes clear that a proper and complete appeal brief must include an Evidence appendix and that such appendix must include copies of any evidence being relied upon on appeal "along with a statement where in the record that evidence was entered in the record by the examiner". The Evidence appendix of the instant appeal brief includes a copy of an exhibit composed of marked-up figures of one of the references. However, nowhere in this Evidence appendix (or anywhere else in the appeal brief) is there a statement found that states where in the record this evidence was previously entered into the record.

In view of the above, either the included exhibit was previously entered and thus appellant need only comply with the requirement in 37 CFR 41.37(c)(1)(ix) to state where it was entered into the record or the exhibit was not previously entered and thus it cannot be a part of the appeal brief in accordance with 37 CFR 41.33(d)(2) and appellant will have to remove it from the appeal brief. Appellant should choose the course of action that applies.